QUESTION PRESENTED

Whether officers of the armed or other uniformed services of the United States who retired prior to June 1, 1958 are entitled, under the Career Compensation Act of 1949, as amended in 1958 by Public Law 85–422, to an increase in their retirement pay for the period from June 1, 1958 to October 1, 1963, greater than the six per cent that they have already received.

STATUTE INVOLVED

The relevant sections of Public Law 85–422 (Act of May 20, 1958), 72 Stat. 122 *et seq.*, are set forth in the Appendix, *infra*, p. 13.

STATEMENT

Each of the petitioners is (or here represents) an officer of one of the armed or uniformed services of the United States,[1] who, prior to June 1, 1958, had retired and was receiving retirement pay computed as a percentage of the pay he would receive if on active duty at his retired grade (Pet. App. 2a).

On June 1, 1958, Public Law 85–422 (Act of May 20, 1958), 72 Stat. 122, took effect. That legislation, which amended the Career Compensation Act of 1949, generally increased the rates of basic pay for members of the armed services on active duty, but provided, in Section 3(a), that:

> [n]otwithstanding any other provision of law, except [section] 4 * * * of this Act * * *,

[1] Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, Coast and Geodetic Survey.

> the changes in rates of basic pay made by this Act do not increase the amount of retired pay, retirement pay, retainer pay, or equivalent pay to which any person is entitled *on the day before* the effective day of this Act [emphasis added].

With exceptions not here relevant, Section 4, in subsection (a), provided that:

> * * * members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, *on the day before* the effective date of this Act, shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date [emphasis added].

In subsection (b), it was provided that:

> [n]otwithstanding any other provision of law, a member of a uniformed service *retired* under any provision of law * * * *on* the effective date of this Act shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater [emphasis added].

From June 1, 1958 until October 1, 1963, each of the officers involved (or his representative) was paid retirement pay at the rate at which he had been receiving such pay prior to June 1, 1958, plus the six per cent increase

specified in Section 4(a) of Public Law 85–422 (Pet. 7).[2] By these present suits, petitioners sought an additional amount of retirement pay for the over five-year period, on the theory that their retirement pay for that period should have been computed on the basis of the new active duty pay rates made effective by Public Law 85–422 (Pet. 5, 7).

The Court of Claims unanimously dismissed the actions. It stated that the language of Public Law 85–422 was susceptible of the government's construction (which was that Section 4(b) applied only to persons who had retired *on,* but not prior to, the effective date of the Act), but concluded that it was also possible to interpret the language to support the theory advanced by petitioners, although doing so would read the critical part of Section 4(a) out of the Act. In order to resolve the ambiguity, therefore, the court examined the background of the statute. On this basis, it held that "the legislative history makes inescapable the conclusion that Congress intended to give officers retired before the effective date the six per cent cost-of-living increase, and no more" (Pet. App. 8a). The court also held that Public Law 85–422 was undoubtedly designed to govern petitioners' retirement pay, notwithstanding any other provision of law (Pet. App. 11a).

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[2] After October 1, 1963, by virtue of new legislation, which concededly was of prospective effect only, officers in petitioners' category became entitled to receive retirement pay based on the active duty pay rates made effective by Public Law 85–422 (Pet. App. 3a).

DISCUSSION

This case, dealing with entitlement to additional retirement pay only for officers of the uniformed services retired prior to June 1, 1958, and only for the period June 1, 1958 to October 1, 1963, is of limited importance, since Congress has now changed the law to grant prospectively to those in petitioners' category the right which petitioners claimed below. Moreover, the decision of the Court of Claims is plainly correct. For even if the language of Public Law 85–422 can be read to permit the construction urged by petitioners, the legislative history makes absolutely clear that Congress intended to give those in petitioners' category a six per cent increase in retirement pay for the period here at issue, and no more.

1. Insofar as petitioners are concerned, Congress, by the terms of Section 3(a) of Public Law 85–422, limited any increase that might result in their retirement pay by virtue of the changes made in the rates of active duty pay to the amount granted by Section 4 of the law. Thus it was stated:

> Notwithstanding any other provision of law, except [section] 4 * * *, the changes in rates of basic pay made by this act do not increase the amount of * * * retirement pay * * * to which any person is entitled on the day before the effective date of this Act.

And any other provision of law which conflicted with this limitation and which was not preserved by Section 4 plainly had to yield in the face of the language "Notwithstanding any other provision of law." Cf. *United States* v. *Dickerson,* 310 U.S. 554.

We think it also clear that Section 4(a) applies to petitioners, and that that Section does not preserve for petitioners any provision of law suspended by Section 3(a). Thus petitioners are squarely within the category of:

> [M]embers and former members of the uniformed services who are entitled to * * * retirement pay * * * on the day before the effective date of this Act.

Petitioners concede that they have been paid the authorized six per cent for the entire period that this Section was effective, *i.e.*, from June 1, 1958 until October 1, 1963, at which later date new legislation took effect.

2. Petitioners contend, however, that they are also within the ambit of Section 4(b), because each is "a member of a uniformed service *retired* * * * on the effective date of * * * [the] Act [June 1, 1958]," and therefore, notwithstanding any other provision of law, each has a right to have his retirement pay computed under the Career Compensation Act of 1949, as amended by Public Law 85–422, or under the Career Compensation Act as it stood on May 31, 1958, whichever option produces the greater increase in retirement pay (Pet. 18–19). Petitioners also stress that pay statutes in effect prior to June 1, 1958, authorizing the computation of retirement pay as a percentage of active duty pay rates, were not expressly repealed until 1963 (Pet. 20). From this fact, petitioners argue that those statutes remained fully effective even after Public Law 85–422 became effective, and that under those statutes and under Section

4(b), and notwithstanding Section 3(a) and Section 4(a), petitioners continued to be entitled to have their retirement pay computed as a percentage of the active duty pay rates, including those enhanced rates made effective by other provisions of Public Law 85–422, since that would produce for them the greater increase in retirement pay, as Section 4(b) allows for those retired "on" the Act's effective date (Pet. 20–21).

But it is at once apparent that all of these contentions depend on petitioners' being within the class of persons covered by Section 4(b). For unless that is the case, Section 3(a)'s limitation of "notwithstanding any other provision of law" plainly operated to suspend the effect of any conflicting law not preserved by Section 4(a), and Section 4(a) limited petitioners' increase in retirement pay to six per cent, and did not preserve any other provision of law.

Petitioners rely upon the phrase in Section 4(b), "a member of a uniformed service retired under any provision of law * * * on the effective date of this Act," in support of their conclusion that they are covered by the Section. According to petitioners, the phrase refers to members like themselves who had the status of retired officers on June 1, rather than to those who actually became retired on and as of that date (Pet. 18). But, given its plain meaning, Section 4(b) applies only to persons retired "*on* the effective date of the Act," while Section 4(a), like Section 3(a), applies to those who were entitled to retirement pay "*on the day before* the effective date of the Act" (emphasis added).

As the court below recognized (Pet. App. 4a), peti-

tioners' interpretation has the effect of reading Section 4(a) out of the statute. However, the court was initially reluctant to accept the construction applied by the government, apparently because that construction gave Section 4(b) a very limited application (Pet. App. 4a).[3] To make certain of Congress' purposes, the court carefully examined the legislative history of Public Law 85-422. It found that Congress did indeed intend to limit Section 4(b) to personnel who actually retired on June 1, 1958, and that those in petitioners' category, who had retired prior to that date, were to receive a flat six per cent increase in retirement pay.

Thus, as the court below noted (Pet. App. 6a-8a), in the Senate Report[4] which accompanied the bill[5]

[3] It should be noted, however, that Section 4(b) refers not only to members of a uniformed service "retired under any provision of law" on the Act's effective date, but also to such persons who are "transferred to the Fleet Reserve or Fleet Marine Corps Reserve" on such date. While the term "retired" might conceivably be regarded, apart from a consideration of the context and the underlying legislative history, as referring to the having of that status instead of the achieving of such status on a particular date, the term "transferred" almost necessarily relates to the accomplishment thereof on and as of a certain date, and hardly can be read as referring to status. Thus, the presence of this parallel language in Section 4(b) helps resolve any possible ambiguity in the meaning of the term "retired", and confirms the conclusion of the court below as to the limited application of this subsection.

[4] S. Rep. No. 1472, 85th Cong., 2d Sess. (1958), reprinted in 2 U.S.C. Cong. & Adm. News (1958) 2465-2491.

[5] H.R. 11470, 85th Cong., 2d Sess. (1958).

that became Public Law 85–422, the Committee on Armed Services made the following explanation of the bill's effect on persons already retired:

> The bill as passed by the House provided in effect that *members retired before the effective date of the act would receive a flat 6-percent increase* except for those on the retired list in the grade of lieutenant general, or equivalent, or general, and equivalent.
>
> The Senate committee * * * was of the opinion that it would not be equitable to permit two pay grades to recompute, with the resulting increases, as contrasted to the other ranks *who are extended only a flat 6-percent increase.*
>
> The Senate committee also added language which * * * (3) clarified the bill so as to make certain that those persons *retiring on the effective date of the bill would retire under the new rates* [S. Rep., *supra*, pp. 10–11, emphasis added].

The Committee particularized this statement in the section-by-section analysis of the bill, stating with respect to the provisions here relevant:

> SECTION 4
>
> Subsection (a)—Six percent for those already retired
>
> Section 4 provides a 6 percent increase in retired pay to persons retired *before the effective date of this act.* * * *
>
> Subsection (b)—Persons retired on effective date of bill
>
> *This subsection would affect only members who become entitled to retired pay* under any provision of law, or to retainer pay, *on the effective date of this act* by providing that their retired or retainer pay would be computed

under the new rates of the bill or the old rates plus 6 percent, whichever is greater. This provision is necessary because the existing language of several of the retirement statutes would otherwise require persons retired on the effective date of the act to have their rates computed under the old rates without the benefit of the 6 percent increase provided by subsection (a) [S. Rep., *supra,* pp. 21–22, emphasis added.]

Similarly, in the House Report[6] which accompanied the bill, H.R. 11470, the House Committee on Armed Services stated:

A major departure from the Department of Defense proposal lies in the treatment of retired personnel. *The Cordiner group* [a Presidential Advisory Committee on Professional and Technical Compensation, headed by Ralph J. Cordiner, president of General Electric] *recommended that pay of all retired personnel should be recomputed on the basis of the new pay scales.* The Department of Defense proposal, H.R. 9979, recommended that retired personnel should receive no increase in retired pay. The Committee on Armed Services has taken the middle ground. *The cost factor involved,* approximately $65 million, *precluded the adoption of the Cordiner Committee recommendation. On the other hand, the Committee felt strongly that the advance in the cost of living has created conditions of hardship which require some measure of relief. Therefore, H.R. 11470 includes an increase of 6 percent to all personnel retired prior to the effective date of the proposed legislation* at a cost of a little

[6] H. Rept. No. 1538, 85th Cong., 2d Sess. (1958).

> over $35 million [H. Rep. No. 1538, *supra*, p. 47, emphasis added].

And in the Conference Report[7] which accompanied H.R. 11470, it was noted that:

> Both the House bill and the Senate amendment provided a 6-percent increase in retired pay for all individuals now on the retired list [H. Rep. No. 1701, *supra*, p. 14].

This legislative history leaves no doubt that Congress limited the application of Section 4(b) to those who actually retired on June 1, 1958, and granted those in petitioners' category only the six per cent increase specified in Section 4(a). And while Congress did not expressly repeal the pre-1958 statutes until 1963, it clearly indicated its will in 1958 (see Section 3(a)) that members in petitioners' category were to receive the limited increase provided "notwithstanding any other provision of law" (Pet. App. 11a).[8] Petitioners accordingly have received their full due.[9]

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[7] H. Rep. No. 1701, 85th Cong., 2d Sess. (1958).

[8] As noted by the court below (Pet. App. 8a), this construction of the pertinent statutory provisions "is completely consistent with the announced purpose of the legislation." Congress wanted to upgrade the quality of career military personnel and provide a financial incentive for those presently serving on active duty to remain in the armed forces. To do this, Congress determined to increase the basic pay rates and extend the benefits of such increase to those retiring on or after the effective date of the legislation. In addition, Congress "wanted everyone to get a cost-of-living increase." The former purpose "would not have been served by allowing persons already retired to benefit from the basic pay increase"; the latter purpose "was served by section 4(a) as to persons already retired," such as petitioners, by giving them a flat six per cent increase in retirement pay. Thus, considering the language of the various sections together, so as to give effect to each of the

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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provisions, and the clear legislative history and the underlying purpose of Congress, as noted above, the court below correctly found "inescapable the conclusion that Congress intended to give officers retired before the effective date the sixpercent cost-of-living increase, and no more" (*ibid.*).

[9] The fact that Congress, *in 1963*, decided to permit service members who retired prior to June 1, 1958, to recompute their retirement pay on the basis of the active duty rates that went into effect on June 1, 1958, only confirms the fact that petitioners were not entitled to do so in 1958, for the 1963 law was not made retroactive. See Act of October 2, 1963, 77 Stat. 210, 213. And that law's legislative history completely confirms that Congress fully understood that Public Law 85–422 had not given retired personnel in petitioners' category the right to computation of retirement pay on the basis of the higher active duty rates made effective in 1958. See, *e.g.*, S. Rep. No. 387, 88th Cong., 1st Sess. 32–33 (1966), quoted in relevant part in the opinion of the court below (Pet. App. 9a–10a).

APPENDIX

Public Law 85–422, 72 Stat. 122 *et seq.*, amending the Career Compensation Act of 1949, as amended, 37 U.S.C. 232 (1958 ed.) *et seq.*, provides in pertinent part:

SEC. 3. (a) Notwithstanding any other provision of law, except sections 4 and 7 of this Act and subsection (b) of this section, the changes in rates of basic pay made by this Act do not increase the amount of retired pay, retirement pay, retainer pay, or equivalent pay to which any person is entitled on the day before the effective date of this Act.

* * * * *

SEC. 4. (a) Except for members covered by section 7 of this Act and persons with two or less years of service for basic pay purposes who were retired for physical disability or placed on the temporary disability retired list, members and former members of the uniformed services who are entitled to retired pay, retirement pay, retainer pay, or equivalent pay, on the day before the effective date of this Act, shall be entitled to an increase of 6 per centum of that pay to which they were entitled on that date.

(b) Notwithstanding any other provision of law, a member of a uniformed service retired under any provision of law, or transferred to the Fleet Reserve or Fleet Marine Corps Reserve, on the effective date of this Act shall have his retired pay or retainer pay computed on the basis of the rates of basic pay set forth in the Career Compensation Act of 1949, as amended by this Act, or on the rates of basic pay set forth in the Career Compensation Act of 1949 on the day before the effective date of this Act, plus 6 per centum of that pay, whichever is greater.

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